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IN REPLY QUOTE:

28 February, 1997

MAR - 4 1997

Office of the Secretary
Federal Communications Commission
1919 M Street NW
Room 222
Washington DC 20554

In the Matter of International Settlement Rates: 1B Docket No. 96 - 261

Attached are the Australian Government's comments in response to the FCC's Notice of Proposed Rulemaking, FCC 96 - 484 in the above referenced docket.

W.J. Henderson
Counsellor

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DEPARTMENT OF
COMMUNICATIONS
AND THE ARTS

MAR - 4 1997

Our Reference
P97-41

Office of the Secretary
Federal Communications Commission
1919 M Street NW Room 222
Washington DC 20554
United States of America

Dear Sir

NOTICE OF PROPOSED RULEMAKING - INTERNATIONAL SETTLEMENT RATES

The Government of Australia thanks the United States Federal Communications Commission for the opportunity to comment on its 19 December 1996 Notice of Proposed Rulemaking (NPRM) in the matter of international settlement rates

Following the 15 February 1997 successful conclusion to the World Trade Organisation negotiations on basic telecommunications, Australia looks forward to working with other countries in implementing the commitments which have been made, including in regard to application of the General Agreement on Trade in Services obligations and implementation of the regulatory principles for basic telecommunications services which were attached to most offers We consider that these commitments will have significant implications for the administration by all Members of telecommunications regulation and consultation between Members on their telecommunications regulatory frameworks should be of much value

The Government of Australia's comments on the NPRM are attached. These comments are submitted following a process of consultation which the Australian Government has conducted with industry We understand that some industry members are also making comments direct to the FCC on this matter

Yours faithfully

Richard Thwaites
Assistant Secretary
Trade and Development Branch
Telecommunications Industry Division

27 February 1997

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FCC NPRM on accounting rates

1 The Government of Australia thanks the United States Federal Communications Commission for the opportunity to comment on its 19 December 1996 Notice of Proposed Rulemaking (NPRM) in the matter of international settlement rates. These comments are submitted following a process of consultation which the Government has conducted with industry. We understand that some industry members are also making comments direct to the FCC on this matter.

2 We support the desirability of lower accounting rates (paragraph 25 of the NPRM). The Australian Government, both in the International Telecommunication Union and the World Trade Organisation, has for a considerable period been seeking to promote this objective, proposing that the desired end result, in a fully competitive market, would be cost-based termination charges that reflected domestic interconnection charges plus any relevant international carriage component (paragraph 16).

3 We agree with the FCC that competition is the most effective way of achieving this outcome in the long run (paragraph 40). We therefore fully support the introduction of competition through both facilities-based carriers and service providers (resellers).

4 The FCC proposal to impose benchmark settlement rates unilaterally, if it can be implemented, should also contribute to reducing accounting rates that are arbitrarily inflated above cost. We are therefore sympathetic to the purpose of the proposed rule-making. However, Australia would not currently consider adopting a similar policy as we prefer a market-driven, rather than administrative, approach to this issue.

5 Given the importance that we attach to full and open competition as a tool to achieve lower accounting rates, we have concerns that some aspects of the proposed FCC approach may, contrary to intentions, inhibit rigorous competition. We would therefore propose that the FCC consider alternative approaches in some cases.

6 We note particularly the proposed condition that resale may be offered only where settlement rates are within (or at the lower end of) the benchmark range (paragraphs 82 and 84):

. the FCC is proposing to allow resale only where the benchmark accounting rates have been reached. By contrast, Australia would suggest that it would be preferable to allow resale to be introduced as an important way of introducing competition to achieve lower accounting rates through market means

. we recognise the potential for misuse of market power, especially by affiliates of carriers. We consider that the proposed ex post approach (of responding to misuse of market power after it occurs,) should be sufficient. The additional ex ante hurdle, forbidding resale until benchmarks have been reached, is both unnecessary and undesirable:

- unnecessary - in practice, Australia has found that ex post powers are an effective deterrent and can deal with abuse if it does occur

- undesirable - it delays the introduction of resale as an important competitive market influence.

7 Similarly, Australia considers that parallel accounting rates and proportionate return of traffic significantly reduce competition in the international traffic market. Australia allows differential accounting rates and differential return of traffic as important tools to promote competition

. we would therefore consider the proposal to impose these conditions on participation in the market (paragraph 76) to be counterproductive. Impositions should be a last resort if there were found to be significant misuse of market power in a particular case.

8 The FCC has requested comments on how an assessment could be made that there has been distortion of competition (paragraph 77)

. consistent with the above, we would not see differential accounting rates or differential return of traffic as evidence in themselves of misuse of market power - on the contrary, they could be evidence of healthy competition

. similarly, we would not see imbalance in the outgoing and incoming traffic streams as any reliable evidence of misuse of market power. It might equally be evidence of healthy competition

- the balance of traffic is due to many factors, including the difference in collection rates, calling patterns, consumer spending power, callback, refile, Home Country Direct, calling cards etc

- also, while callback and refile in particular may lead to increased "accounting rate outpayments" for the U.S. carriers (paragraph 12), this traffic involves higher overall inpayments to the U.S. when the collection revenues for call-back operator or carriers providing the refile are taken into account

- "one-way bypass" (paragraph 11) may be of overall benefit (for example, through putting pressure towards lower prices for incoming calls) and may not in itself be anticompetitive. In assessing any trade effect, the incoming and outgoing traffic streams should be assessed as separate markets

. care is needed to ensure the rules deal with genuinely anticompetitive practices and are not themselves abused as a de facto means of protecting U.S. terms of trade (particularly where a loss in terms of trade may be due to U.S. costs being higher than more efficient service suppliers)

. we would therefore suggest that the rules would need to be supported by a transparent process to assess whether there has been distortion of competition. General rules based on traffic patterns will not be as effective or accurate as a case-by-case analysis of the ability of carriers to access a particular market. Arbitrary rules will themselves create anomalous outcomes that attract successful challenge, over time.

9 We note that the concept of "meaningful competition" is an important one in the NPRM (for example, in paragraph 85, the FCC proposes to "presume" that carriers have cost-based settlement rates where there is "meaningful competition". In turn, this appears to enable carriers to be presumed to have satisfied the requirement to meet benchmarks for the purposes of paragraph 63 and appears to be a basis for allowing resale for the purposes of paragraphs 82 or 84)

. we consider it desirable therefore that the FCC detail the criteria it would use to assess whether there is "meaningful competition".

10 We welcome the statement (paragraph 79) that the proposal should allow barriers to entry by foreign carriers into the U.S. market to be removed. Commitments undertaken at the WTO Group on Basic Telecommunications reinforce Australia's view that access to licences to operate in the U.S. should not, as is currently the case, involve unduly burdensome processes, the costs of which constitute a barrier in themselves.

11 Given the recent WTO agreement, we assume that the FCC will be obtaining its own legal advice and will be consulting with the WTO secretariat on the MFN consistency of its proposals, particularly in regard to

. the rule that resale is conditional on achievement of benchmarks

. the rule that benchmarks are different for different categories of country

. the rule that benchmarks will be presumed to have been met if there is effective competition.

12 As a general note, we consider that the the rationale for the NPRM may be somewhat overstated in that, as the FCC itself acknowledges,

. high outpayments are not due solely to high accounting rates (and, we would add, may not in themselves be totally undesirable - see point 8 above)

. high accounting rates are not the sole cause of high collection rates (U.S. collection rates to Australia have not fallen recently even though accounting rates have fallen).

13 On a point of detail, in paragraph 82 it is stated that resale will not be permitted unless the settlement rates are "within" the benchmark range. We presume that this should read unless the settlement rates are "at or below" the benchmark range - since settlement rates below the benchmark range should be encouraged. This approach would also be consistent with the approach in paragraph 63, where settlement rates will be required to be "at or below" the benchmarks. A similar comment could be made about paragraph 84.

Telecommunications Industry Division
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Canberra, Australia

27 February 1997